



**The Comptroller General
of the United States**

Washington, D.C. 20548

W. Johnson
PJH

Decision

Matter of: Happy Penguin
File: B-225715
Date: February 20, 1987

DIGEST

Where bidder transmits bid modification by Western Union to agency TWX machine at 9:48 a.m. on the day of a 10:00 a.m. bid opening, late receipt of the modification is due to the bidder's failure to allow sufficient time for delivery to the designated location for receipt of bids rather than to mishandling by the agency.

DECISION

Happy Penguin protests the rejection of its telegraphic bid modification as late under solicitation No. DAAA09-86-B-0281, issued by the U.S. Army Armament, Munitions and Chemical Command, Rock Island, Illinois. We dismiss the protest.

The Army rejected Happy Penguin's bid modification because it was not received by the time set for bid opening, 10:00 a.m. on January 20, 1987. Happy Penguin states that it sent the modifications by Western Union TWX machine on the day of bid opening and that the message arrived at AMC's TWX machine at 9:48 a.m. Happy Penguin asserts that the modification should have been considered because it was "transmitted and received prior to bid opening."

The standard solicitation clause and pertinent procurement regulation, Federal Acquisition Regulation, 48 C.F.R. § 14.304-1(a) (1986), permits the consideration of a late telegraphic bid modification if the lateness is due to government mishandling after receipt at the government installation. In this case it appears that the paramount cause for the late receipt was Happy Penguin's failure to send the message until shortly (12 minutes) before bid opening rather than mishandling by the government.

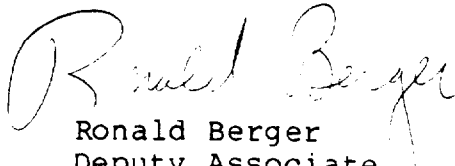
Bidders must allow a reasonable time for bids to be delivered from the point of receipt to the designated location for receipt of bids; when they do not do so, late arrival at the designated location cannot be attributed to government

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mishandling. See Monroe Wire & Cable Co., B-221896, May 28, 1986, 86-1 ¶ 494; Delta Lighting Corp., B-219649, Oct. 30, 1985, 85-2 CPD ¶ 491.

Happy Penguin left only 12 minutes for its TWX message to be delivered from the receiving TWX machine to the specified location for receipt of bids. Although the protester asserts that its modification was in the possession of the government 12 minutes before bid opening and the "responsibility for receiving [the] telegraphic modification rests with the bid opening officer," Happy Penguin does not allege, nor are we aware of any basis for holding, that 12 minutes was sufficient time for the bid modification to have been delivered to the designated location. See, e.g., Delta Lighting Corp., supra, where we held that 11 minutes was not sufficient time to allow for receipt of a bid modification sent to an agency's TWX machine. Therefore, it does not appear that the lateness here was due to government mishandling. Accordingly, the rejection of the bid modification was proper.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel